

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 980

Introduced by Wallman, 30; Conrad, 46; Haar, 21; Karpisek, 32;
Mello, 5; White, 8.

Read first time January 19, 2010

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to state government; to amend sections 73-301,
2 73-302, 73-303, 73-304, 73-305, 73-306, 73-307, and
3 81-154.01, Reissue Revised Statutes of Nebraska; to name
4 an act; to define terms; to change provisions relating to
5 contracts for personal services; to provide requirements
6 for privatization contracts; to harmonize provisions; to
7 provide an operative date; and to repeal the original
8 sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. This section, sections 73-301 to 73-307, and
 2 sections 2 and 8 of this act shall be known and may be cited as the
 3 State Personal Services Contract Act.

4 Sec. 2. For purposes of the State Personal Services
 5 Contract Act:

6 (1) Contract for personal services means an agreement
 7 by a contractor to provide human labor but does not mean a
 8 contract to supply only goods or personal property. The term
 9 includes contracts with private service providers, consultants,
 10 and independent service contractors, except as provided in section
 11 73-307;

12 (2) Director means the Director of Administrative
 13 Services;

14 (3) Privatization contract means a contract for personal
 15 services by which a person other than a state employee contracts
 16 with a state agency to provide human labor valued at fifty thousand
 17 dollars or more annually if the human labor is the same or
 18 substantially similar to and in lieu of such labor provided, in
 19 whole or in part, by permanent, classified state employees and if
 20 the contract would result in a reduction in force of at least one
 21 permanent, classified state employee position in the state agency
 22 or the elimination of a vacant permanent, classified state employee
 23 position in the state agency; and

24 (4) State agency means an agency of the state other than
 25 the University of Nebraska, the Nebraska state colleges, and any

1 other board, commission, or agency established by the Constitution
2 of Nebraska.

3 Sec. 3. Section 73-301, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 73-301 (1) ~~The Director of Administrative Services~~
6 director shall review and approve or disapprove any contract
7 for personal services between a private entity and ~~any a~~ a state
8 agency, ~~other than (1) the University of Nebraska, (2) the Nebraska~~
9 ~~state colleges, and (3) any other board, commission, or agency~~
10 ~~established by the Constitution of Nebraska, if, on the effective~~
11 ~~date of the contract, the personal services are performed by~~
12 ~~permanent state employees of the agency and will be replaced by~~
13 ~~services performed by the private entity~~ or if the contract is a
14 privatization contract. ~~The contract~~

15 (2) Each contract subject to approval by the director
16 shall be subject to the public bidding procedures established in
17 sections 81-145 to 81-162 except in emergencies approved by the
18 Governor.

19 ~~For purposes of this section, contract for personal~~
20 ~~services means an agreement by a contractor to provide human~~
21 ~~labor but does not mean a contract to supply only goods or~~
22 ~~personal property. The term includes contracts with private service~~
23 ~~providers, consultants, and independent service contractors.~~

24 Sec. 4. Section 73-302, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 73-302 (1) A state agency that seeks to enter into a
2 contract ~~described in section 73-301~~ for personal services with
3 a private entity shall submit the following information to the
4 ~~Director of Administrative Services;~~ director:

5 (a) The proposed contract;T

6 (b) ~~a~~ A review of the long-term actual cost savings;T

7 (c) ~~the~~ The measurable goals for improving the quality of
8 the service;T and

9 (d) ~~an~~ An assessment of the feasibility of alternatives
10 within the agency to contracting for performance of the service.

11 (2) In calculating the cost savings under subsection (1)
12 of this section, the state agency shall project, for twelve months
13 and for sixty months, the following:

14 (a) Direct costs, including salary and fringe benefits;

15 (b) Indirect overhead costs which shall include only
16 those costs that can be attributed solely to the work in question
17 and that would not exist if the work were not performed by state
18 employees. Indirect overhead costs shall include the pro rata share
19 of existing administrative salaries and benefits, rents, equipment
20 costs, utilities, and materials;

21 (c) Any continuing or transitional costs that are
22 directly associated with contracting for the work, including
23 unemployment compensation and the cost of transitional services;
24 and

25 (d) Additional costs of performance of the work by state

1 employees, including the salaries and benefits of additional staff
2 performing inspection, supervision, and monitoring duties and the
3 cost of additional space, equipment, and materials needed to
4 perform the services.

5 Sec. 5. Section 73-303, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 73-303 A state agency that seeks to enter into a contract
8 ~~described in section 73-301~~ for personal services shall also submit
9 to the ~~Director of Administrative Services~~ director a formal plan
10 of assistance to the state employees of such state agency who will
11 be displaced by such contract. The plan shall include, but need not
12 be limited to, the following provisions:

13 (1) Efforts by the state agency to place displaced
14 employees in vacant positions in that agency or another state
15 agency;

16 (2) Provisions in the contract for personal services, if
17 feasible, for the hiring of displaced employees by the contractor;
18 and

19 (3) Demonstration by the state agency that it has taken
20 formal and positive steps in considering alternatives to such
21 contract, including reorganization, reevaluation of service, and
22 reevaluation of performance.

23 Sec. 6. Section 73-304, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 73-304 The ~~Director of Administrative Services~~ director

1 may approve a proposed contract for personal services if:

2 (1) The potential economic advantage of contracting is
3 not outweighed by the public's interest in having the particular
4 services performed directly by the state agency;

5 (2) The contract does not adversely affect the state's
6 affirmative action efforts;

7 (3) The contract will include adequate control mechanisms
8 to insure that the services are provided pursuant to the terms of
9 the contract; and

10 (4) The private entity is fairly compensating its
11 employees.

12 Sec. 7. Section 73-305, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 73-305 The ~~Director of Administrative Services~~ director
15 shall, within forty-five days after receipt of the information
16 described in sections 73-302 and 73-303 from the state agency,
17 prepare a report detailing why the proposed contract for personal
18 services was approved or disapproved. The report shall be
19 delivered to the chairperson of the Appropriations Committee of the
20 Legislature and the Legislative Fiscal Analyst.

21 Sec. 8. The director shall not approve a privatization
22 contract unless all of the following requirements are satisfied:

23 (1) Thirty-five days prior to the beginning of any open
24 bidding process, the state agency shall provide written notice
25 to the collective-bargaining agent of the intent to seek to

1 enter a privatization contract. During such thirty-five-day period,
2 the collective-bargaining agent shall have the opportunity to
3 discuss alternatives to contracting. Such alternatives may include
4 amendments to the contract if mutually agreed upon by the parties.
5 Notices regarding the bid opportunity may not be issued during such
6 thirty-five-day period. The continuation of discussions beyond the
7 end of such thirty-five-day period shall not delay the issuance of
8 notices;

9 (2) The proposed privatization contract is projected to
10 result in overall cost savings to the state of at least ten percent
11 above the projected cost of having the services provided by state
12 employees covered under the State Employees Collective Bargaining
13 Act; and

14 (3) (a) When comparing the cost of having a service
15 provided by state employees covered under the State Employees
16 Collective Bargaining Act to the cost of having the service
17 provided by a contractor, the expected costs of having services
18 provided by state employees covered under the State Employees
19 Collective Bargaining Act and obtaining the service through a
20 contractor should be compared over the life of the contract.
21 One-time costs associated with having services provided by a
22 contractor rather than state employees covered under the State
23 Employees Collective Bargaining Act, such as the expected cost of
24 leave pay-outs for separating employees, unemployment compensation,
25 and the cost of meeting the state's obligation, if any, to continue

1 health insurance benefits, shall be spread over the expected life
2 of the contract.

3 (b) For purposes of this subdivision, the basic cost of
4 services by a contractor includes:

5 (i) The bid price or maximum acceptable bid identified by
6 the state agency; and

7 (ii) Any additional costs to be incurred by the
8 state agency for inspection, facilities, reimbursable expenses,
9 supervision, training, and materials, but only to the extent that
10 these costs exceed the costs the state agency could expect to incur
11 for inspection, facilities, reimbursable expenses, and materials
12 if the services were provided by state employees covered under the
13 State Employees Collective Bargaining Act.

14 (c) For purposes of this subdivision, the basic cost
15 for services provided by a state employee covered under the State
16 Employees Collective Bargaining Act includes:

17 (i) Wages, benefits, and training;

18 (ii) The cost of supervision and facilities, but only to
19 the extent that these costs exceed the costs the state agency could
20 expect to incur for supervision or facilities if the services were
21 provided by a contractor; and

22 (iii) The estimated cost of obtaining goods when the
23 comparison is with the cost of a contract that includes both goods
24 and services.

25 (d) Possible reductions in the cost of obtaining

1 services from state employees covered under the State Employees
 2 Collective Bargaining Act that require concessions shall not
 3 be considered unless proposed in writing by the certified
 4 collective-bargaining agent and mutually agreed to by the state and
 5 the collective-bargaining agent.

6 Sec. 9. Section 73-306, Reissue Revised Statutes of
 7 Nebraska, is amended to read:

8 73-306 The Department of Administrative Services shall
 9 adopt and promulgate rules and regulations to carry out ~~sections~~
 10 ~~73-301 to 73-305.~~ the State Personal Services Contract Act. Such
 11 rules and regulations shall apply to the ~~Director of Administrative~~
 12 ~~Services~~ director in carrying out his or her duties pursuant to
 13 ~~such sections.~~ the act.

14 Sec. 10. Section 73-307, Reissue Revised Statutes of
 15 Nebraska, is amended to read:

16 73-307 ~~Sections 73-301 to 73-306~~ The State Personal
 17 Services Contract Act shall not apply to the Nebraska Consultants'
 18 Competitive Negotiation Act.

19 ~~Sections 73-301 to 73-306~~ The State Personal Services
 20 Contract Act shall not be construed to apply to renewals of
 21 contracts for personal services already approved pursuant to or not
 22 subject to ~~such sections,~~ the act, to amendments to such contracts,
 23 or to renewals of such amendments unless the amendments would
 24 directly cause or result in the replacement by the private entity
 25 of additional permanent state employees or positions greater than

1 the replacement caused by the original contract.

2 Sec. 11. Section 81-154.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 81-154.01 The materiel division shall make available
5 copies of current purchase agreements and standard specifications
6 to the University of Nebraska. The University of Nebraska may
7 utilize such purchase agreements if it determines that it would
8 be to its advantage to do so. The materiel division may utilize
9 purchase agreements entered into by the University of Nebraska
10 upon a finding by the materiel administrator that the use of
11 such agreements would be in the best interests of the state.
12 For purposes of this section, purchase agreements do not include
13 contracts for personal services subject to ~~sections 73-301 to~~
14 ~~73-307.~~ the State Personal Services Contract Act.

15 Sec. 12. This act becomes operative on July 1, 2011.

16 Sec. 13. Original sections 73-301, 73-302, 73-303,
17 73-304, 73-305, 73-306, 73-307, and 81-154.01, Reissue Revised
18 Statutes of Nebraska, are repealed.